

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:1
PLR-119535-15

Date:
November 20, 2015

Legend

X =

A =

Trust1 =

Trust2 =

Year =

Date =

State =

Dear :

This responds to a letter dated June 5, 2015, and supplemental correspondence, submitted on behalf of X by X's authorized representatives, requesting a ruling under § 1362(b)(5) and § 1362(f) of the Internal Revenue Code (Code).

FACTS

According to the information submitted, X was incorporated in Year under the laws of State. X elected to be an S corporation effective Date. As of Date, X's shareholders were Trust1 and Trust2. X represents that Trust1 is a grantor trust and Trust 2 meets the definition of a "qualified subchapter S trust" (QSST) under § 1361(d)(3). However,

the required consent to X's S corporation election may not have been obtained from A, the trustee of Trust1. Further, no election was made to treat Trust2 as a QSST effective Date.

X represents that there was no tax avoidance or retroactive tax planning involved in the failure of A to properly execute X's Form 2553, Election by a Small Business Corporation, or in the failure of Trust2 to timely file a QSST election. X further represents that X and its shareholders have treated X as an S corporation and Trust2 as a QSST since Date. In addition, X and its shareholders agree to make any adjustments consistent with the treatment of X as an S corporation as may be required by the Secretary.

LAW AND ANALYSIS

Section 1361(a)(1) provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1)(B) provides that the term "small business corporation" means a domestic corporation that is not an ineligible corporation and that does not, among other requirements, have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual.

Section 1361(c)(2)(A)(i) provides that, for the purposes of § 1362(b)(1)(B), a trust all of which is treated (under subpart E of part I of subchapter J of Chapter 1) as owned by an individual who is a citizen or resident of the United States, may be an S corporation shareholder.

Section 1361(d)(1) provides that in the case of a QSST with respect to which a beneficiary makes an election under § 1361(d)(2), the trust is treated as a trust described in § 1361(c)(2)(A)(i), and for purposes of § 678(a), the beneficiary of such trust shall be treated as the owner of that portion of the trust which consists of stock in an S corporation with respect to which the election under § 1361(d)(2) is made. Section 1361(d)(2)(A) provides that a beneficiary of a QSST may elect to have § 1361(d)(1) apply.

Section 1.1361-1(j)(6)(ii) of the Income Tax Regulations provides that the current income beneficiary of the trust must make the election under § 1361(d)(2) by signing and filing with the service center with which the corporation files its income tax return the applicable form or statement including the information listed in § 1.1361-1(j)(6)(ii).

Section 1361(d)(2)(A) provides that a beneficiary of a QSST (or his legal representative) may election to have § 1362(d) apply.

Section 1362(a)(1) provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with the provisions of § 1362, to be an S corporation.

Section 1362(d)(2)(A) provides that an election under § 1362(a) is terminated whenever (at any time on or after the first day of the first taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation. Section 1362(d)(2)(B) provides that any termination under § 1362(d)(2)(A) is effective on and after the date of cessation.

Section 1362(f) provides that if (1) an election under § 1362(a) or § 1361(b)(3)(B)(ii) by any corporation (i) was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents, or (ii) was terminated under § 1362(d)(2) or (3) or § 1361(b)(3)(C); (2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances resulting in such ineffectiveness or termination, steps were taken so that the corporation for which the election was made or the termination occurred is a small business corporation or a QSub, as the case may be, or to acquire the required shareholder consents; and (4) the corporation for which the election was made or the termination occurred, and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agree to make the adjustments (consistent with the treatment of the corporation as an S corporation or a QSub, as the case may be) as may be required by the Secretary with respect to this period, then, notwithstanding the circumstances resulting in such ineffectiveness or termination, the corporation shall be treated as an S corporation or a QSub, as the case may be, during the period specified by the Secretary.

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that X's S corporation election was ineffective on Date as a result of the missing consent to X's S corporation election and the failure of the beneficiary of Trust2 to make a QSST election under § 1361(d)(2) for Trust2. We further conclude that the ineffectiveness of X's S corporation election constituted an inadvertent invalid election within the meaning of § 1362(f). Consequently, under § 1362(f), X will be treated as an S corporation from Date and thereafter, provided that X's S corporation election was otherwise valid and not otherwise terminated under § 1362(d).

As a condition of this ruling, X must submit a properly completed Form 2553, Election by a Small Business Corporation, with an effective date of Date, to the appropriate service center within 120 days from the date of this letter. The beneficiary of Trust2 must also file an election under § 1361(d)(2)(A) for Trust2 with an effective date of Date

with the appropriate service center within 120 days from the date of this letter. A copy of this letter should be attached to both elections and to the consent statements.

Except as specifically provided herein, we express or imply no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code, including whether X was otherwise a valid S corporation or whether Trust2 is eligible to elect to be treated as a QSST.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Joy C. Spies

Joy C. Spies
Senior Technician Reviewer
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes

cc: